IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALSON SCHMIDT,	:	CIVIL ACTION
	:	
v.	:	
	:	
DR. F.N.U. MALINOV, et al.	:	NO 98-CV-1079

MEMORANDUM

Giles, C.J. May _____, 1999

Pro se Prisoner, Alson Schmidt ("Schmidt"), filed a Complaint against Defendants, Clinical Director Dr. David Malinov ("Dr. Malinov"), Food Service Administrator Ralph Gundrum ("Gundrum"), Food Service Foreman Albert Rivera ("Rivera"), Physicians' Assistant Francisco Ortiz ("Ortiz"), and Physicians' Assistant Maryse Wambach ("Wambach"). On February 9, 1999, this court granted Defendants' motion to dismiss Schmidt's Bivens claim pertaining to conditions of confinement and other common law torts claims. In addition, this court denied Defendants' motion to dismiss Schmidt's Bivens claim advancing medical maltreatment.[1]

The court must decide whether Schmidt is entitled to relief due to a violation of his Eighth Amendment rights. For the reasons that follow, the court holds that there is no

[1] Defendants attached and used other evidentiary material in their motion to dismiss that was not attached to Plaintiff's Complaint. For this reason, discovery was extended twenty (20) days, and the parties had an opportunity to submit additional briefs, since they were on notice that the court would treat the motion to dismiss as a motion for summary judgment.

constitutional violation and summary judgment shall be granted in favor of Defendants.

I. Background

While incarcerated at FCI-Schuylkill, Schmidt worked in the Food Service Department as a dishwasher. (Amended Complaint, § IV). He alleges that he told Food Service Supervisors Gundrum and Rivera that the dishwashing room was: (1) prone to flooding; (2) hazardous due to the presence of soap, grease, and other debris; (3) missing several floor tiles; (4) without reliable overhead lighting; and (5) dangerous because its ceiling was "in such a state of disrepair that same fixtures would fall on the unsuspecting." Id. Schmidt alleges that his concerns were ignored and that he tried to get another job assignment because of concerns for his safety. Id.

Schmidt alleges that on December 10, 1995, he had a serious "slip and fall" in the dishwashing room. Id. Schmidt alleges that "the water on the floor and all other substances of viscosity caused me to lose my [Schmidt] footing, and if Gundrum and Rivera had not been deliberately indifferent to my safety, the conditions that caused my injuries would have been prevented." Id. Schmidt alleges that, as a result of the fall, he is in constant pain and that his leg must remain in a brace. Id.

After Schmidt's "slip and fall," he was taken to the

Health Services Department ("Health Services") and was treated by a Physicians' Assistant,[2] other than Defendant Wambach. (Am. Compl. § IV). He was given some "first aid treatment", placed on idle time from work detail in the Food Service Department, and provided with a walking cane. Id. On December 18, 1995, Schmidt was prescribed additional pain and anti-inflammation medication. Malinov Declaration ¶ 6. Schmidt was subsequently seen and treated by FCI-Schuylkill's health personnel on December 26 and 29, 1995, and January 4 and 18, 1996. Id. at ¶ 7. On March 18, 1996, Schmidt received a Magnetic Resonance Imaging Test ("MRI") and was scheduled for knee surgery outside of FCI-Schuylkill on April 24, 1996. Id. at ¶¶ 10-11. Schmidt refused to have the surgery as scheduled.[3] (Am. Compl. § IV).

On December 14, 1996, Schmidt returned to Health Services and was examined by Wambach. Id. Schmidt alleges that Wambach told him to administer a hot cloth to his knee to lessen the pain. Id. On December 29, Schmidt alleges because the pain was getting worse, he returned to Health Services. Id. Wambach again examined Schmidt, gave Schmidt pain killers but took away the walking cane. Id.

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[2] The name of this Physicians' Assistant is not in the record.

[3] Schmidt's reason for refusing surgery was that he was not informed beforehand of the complication which may arise during an operation. (Amended Complaint § IV).

On January 4, 1997, Schmidt alleges that the pain became significantly worse. Id. He again went to Health Services. (Am. Compl. § IV). He alleges that Physician Assistant Ortiz refused to examine him, referred to him with a racial slur, and told him to get out. Id. Ortiz contends he was not at work on January 4, 1997. Ortiz Declaration ¶ 3. After the alleged incident, Physician Assistant Stephan arranged for Schmidt to be examined by an orthopedic specialist. (Am. Compl. § IV). Schmidt alleges that his physical health deteriorated because of the "indifferent observation by Ortiz and Wambach." Id.

Schmidt alleges that Dr. Malinov then "made a deliberate decision to 'punish' me for not having surgery on an informed [sic] whim" and took Schmidt's crutches away, terminated Schmidt's work idle, and "vetoed" Schmidt's later decision to have surgery. Id. Schmidt alleges that only after Dr. Malinov left FCI-Schuylkill was he able to get the necessary knee surgery. Id. Dr. Malinov insists "[A]t no time did I [Dr. Malinov] take any actions concerning Mr. Schmidt's medical care for the purpose of punishing him for his refusal to undergo surgery in April of 1996 or to punish him for any other reason." Malinov Declaration ¶ 20. FCI-Schuylkill continued to treat Schmidt with medications and activity restrictions until he underwent knee surgery on August 29, 1997. Id. at ¶¶ 16-17. The

arthroscopic surgery repaired ligament and joint problems in Schmidt's knee. (Def.'s Br. Supp. Mot. Summ. J. at 9).

Discussion

II. Summary Judgment

Insofar as the court has considered the affidavits, exhibits, and declarations attached to Defendants' memorandum of law in support of its motion, the court shall treat Defendants' motion as one for summary judgment. Under Fed.R.Civ.P. 56(c) summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." This court must construe all facts and inferences in the light most favorable to the nonmoving party. Lyons v. United States Marshals, 840 F.2d 202, 204 (3d Cir. 1988).

Under this construction, the movant must prevail if there are no genuinely disputed issues of material facts that could support a verdict for the non-moving party and that would prove essential to the claim. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986); In re Paoli R.R. Yard PCB Litigation, 916 F.2d 829, 860 (3d Cir. 1990). A genuine issue of material fact exists only if "reasonable jurors could find facts which

demonstrated, by a preponderance of the evidence, that the nonmoving party is entitled to a verdict." In re Paoli R.R. Yard PCB Litigation, 916 F.2d at 860; See Anderson, 477 U.S. at 248.

III. Medical Maltreatment

The legitimacy of an inmate's claim for lack of medical treatment depends on whether it represents cruel and unusual punishment. The United States Supreme Court held in Estelle v. Gamble, "the deliberate indifference to the serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). The Supreme Court added:

> ". . . in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' . . . Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."

Id. at 105-06.

As long as a prisoner has received some medical attention or some care, inadequacy of the care that was given will not support an Eighth Amendment claim. Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978); see also Durmer v. O'Carroll, 991 F.2d 64 (3d Cir. 1993)(simple medical malpractice is insufficient to present a constitutional violation). Therefore, a claim for a negligent diagnosis or treatment will not rise to level of

deliberate indifference.

The standard has been split into a two part test: (1) deliberate indifference and (2) serious medical need by the prisoner. Palladino v. Wackenhut Corrections, et al.,[4] 1998 WL 855489, *2 (E.D. Pa. Dec. 10, 1998)(citing West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978)).

The Supreme Court in Farmer v. Brennan, held that an official shows deliberate indifference when an official "knows of and disregards an excessive risk to inmate health or safety; the official must be both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. Farmer v. Brennan, 511 U.S. 825 , 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). An official's failure to alleviate a significant risk that he should have perceived but did not, cannot be condemned as the infliction of punishment. Id.

The concept of a serious medical need has two

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[4] In Palladino, plaintiff alleged that defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by failing to treat his diabetes and depression with medications he was taking prior to his incarceration. Palladino, 1998 WL 855489, at *1. Plaintiff was also diagnosed as having inactive tuberculosis, which he also alleges defendants failed to treat. Id. The court entered summary judgment for defendants stating that plaintiff failed to produce evidence to support his claim of inadequate medical treatment. Id. at *4. "Plaintiff's disagreement over the care does not rise to the level of a violation of his Eighth Amendment rights." Id. Lastly, there was not any evidence of defendants' deliberate indifference or a serious injury to support a constitutional violation. Id.

components, one relating to the consequences of a failure to treat, the other relating to the obviousness of those consequences. Colburn v. Upper Darby Twp., 946 F.2d 1017, 1023 (3d Cir. 1991). The inmate's condition must be such that a failure to treat can be expected to lead to substantial harm and suffering, injury, or death. Id. Furthermore, the condition must be one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. Id.

There is no dispute that Schmidt received medical treatment for his injured knee. The argument appears to be that Schmidt did not receive proper treatment. Schmidt disagrees with the care and treatment Defendants employed with regard to his knee. See also Haberstick v. Nesbitt, et al., 1997 WL 793583, *2 (E.D. Pa. July 29, 1998)(federal courts are generally reluctant to second guess medical judgment). However, Schmidt was taken to and treated by the medical staff at FCI-Schuylkill many times. Defendants provided Schmidt with a walking cane, hot cloths, pain killers, and ultimately arthroscopic surgery to relieve the pain on his knee. Schmidt's claim is nothing more than a disagreement over the medical care that he received, and as such fails to allege the "deliberate indifference to serious medical needs" necessary to state an Eighth Amendment claim. Accordingly, the court finds that Schmidt received medical treatment in response to his requests and that he has presented no evidence which would

support his allegations of deliberate indifference. Therefore his Eighth Amendment claim fails.[5]

Conclusion

For the foregoing reasons, Defendants' motion for summary judgment is granted.

An appropriate order follows.

[5] Schmidt's claim against Defendant Ortiz for his racial epithet also fails. "Mere words standing alone will not support a civil rights action." Wise v. Augustine, et al., 1997 WL 534695, *2 (E.D. Pa. Aug. 8, 1997).